

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KANIKA HOMAN**

Claimant

VS.

**U.S.D. #259**

Self-Insured Respondent

Docket No. **1,058,385**

**ORDER**

Self-insured respondent requests review of the March 8, 2012, preliminary hearing Order entered by Administrative Law Judge Thomas Klein. Chris A. Clements, of Wichita, Kansas, appeared for claimant. Vincent A. Burnett, of Wichita, Kansas, appeared for the respondent.

The record on appeal is the same as that considered by the ALJ and consists of the preliminary hearing transcript with exhibits taken March 8, 2012, and all pleadings contained in the administrative file.

**ISSUES**

Claimant was unloading a wheelchair bound student from the bus when a wheel came off the wheelchair. As claimant held the wheelchair up so the student wouldn't fall, claimant injured her left wrist. Respondent agreed the incident happened but argues that the accident only aggravated claimant's preexisting carpal tunnel syndrome and pursuant to K.S.A. 2011 Supp. 44-508(f)(2) such an injury is not compensable.

The Administrative Law Judge (ALJ) found claimant's accident on August 26, 2011, compensable as the incident was the prevailing factor for her left wrist condition and need for medical treatment.

Respondent requests review of whether claimant met with personal injury by accident arising out of and in the course of her employment. Respondent argues that claimant's workplace injury aggravated her preexisting carpal tunnel syndrome and pursuant to K.S.A. 2011 Supp. 44-508(f)(2) an injury that solely aggravates a preexisting condition is not compensable.

Claimant argues that she suffered a specific traumatic injury which was the prevailing factor in her condition and need for medical treatment. Therefore, the ALJ's Order should be affirmed.

The sole issue raised on appeal is whether claimant suffered a compensable personal injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant, employed as a para-educator with respondent since August 2009, had an incident with a student in a wheelchair on August 26, 2011. Claimant works with mentally challenged children.

Claimant described the incident:

I was unloading the student from the bus, bringing her into the building, and her wheel came off of her wheelchair, and I was holding her up so she wouldn't fall to the ground while the other two paras were trying to unstrap her from her chair, because she was secure, feet was secure, chest harness was secure, and seat belt was secure.<sup>1</sup>

The left big wheel on the wheelchair fell off and as a result of holding the student up claimant twisted her left wrist. Claimant experienced an immediate onset of pain in her left wrist.

Claimant was referred that day for treatment with Dr. Mark Melhorn. The doctor diagnosed claimant with a painful left hand and wrist. Dr. Melhorn then treated claimant with a series of injections into her left wrist. In the office notes from claimant's September 27, 2011 office visit with Dr. Melhorn it was noted that claimant probably had preexisting carpal tunnel syndrome and the injury possibly might have accentuated the process.

At the request of claimant's attorney, Dr. Pedro A. Murati examined claimant on December 15, 2011. Dr. Murati diagnosed claimant with an aggravation of her left carpal tunnel syndrome and a left torn triangular fibrocartilage. Dr. Murati further opined the conditions were the direct result of the August 26, 2011 accident. And the accident at work was the prevailing factor in the development of her conditions.

K.S.A. 2011 Supp. 44-508(d) defines accident:

'Accident' means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of

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<sup>1</sup> P.H. Trans. at 6-7.

occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. 'Accident' shall in no case be construed to include repetitive trauma in any form.

The claimant's incident at work on August 26, 2011, clearly was a sudden and unexpected traumatic event. The incident meets the definition of an accident which occurred during claimant's work shift. Consequently, claimant suffered a work-related accident on August 26, 2011. And Dr. Murati opined the accident was the prevailing factor in causing claimant's injuries.

Before the recent statutory amendments there would be no dispute claimant suffered accidental injury arising out of and in the course of her employment. But there is now an additional element regarding whether the injury is compensable even in a case where it is not disputed claimant suffered an accident at work. K.S.A. 2011 Supp. 44-508(f)(2) provides:

An injury is compensable only if it arises out of and in the course of employment.  
An injury is not compensable because work was a triggering or precipitating factor.  
An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

Again there is no serious dispute claimant suffered an accident at work which arose out of and in the course of her employment. But even such an obvious work-related accident is not compensable if it solely renders an asymptomatic preexisting condition symptomatic.

In this case there is evidence that claimant had been diagnosed with preexisting carpal tunnel syndrome in her left wrist. Claimant testified that she not only was unaware of that diagnosis but also her left wrist was asymptomatic until the August 26, 2011 work-related accidental injury. In 2008 claimant had suffered a fall in her shower and injured her right elbow. In the course of treatment for that injury a nerve conduction study to both upper extremities was read as positive for bilateral carpal tunnel syndrome. Claimant testified that after that injury she only received treatment for her right elbow and she was never told about the bilateral carpal tunnel syndrome. And claimant testified that her left wrist was asymptomatic. In 2008 claimant also saw Dr. Melhorn one time as a result of her right elbow injury and in his records he noted the nerve conduction study indicated bilateral carpal tunnel syndrome. But claimant received no treatment from Dr. Melhorn.

Turning to the medical evidence in this case it should be noted that Dr. Melhorn, the treating physician, diagnosed claimant with a painful left hand and wrist. Dr. Melhorn never diagnosed left carpal tunnel syndrome nor was his treatment for that condition. When notified by respondent that the left carpal tunnel syndrome was preexisting the doctor noted it was "possible" the injury "might" have accentuated claimant's probable preexisting left carpal tunnel syndrome. Dr. Murati noted the injury aggravated the preexisting carpal

tunnel syndrome and also caused a left torn triangular fibrocartilage. And Dr. Murati provided an undisputed opinion that the accident was the prevailing factor in the need for medical treatment for both conditions.

Simply stated, Dr. Melhorn did not diagnose left carpal tunnel syndrome. The doctor provided treatment for claimant's diagnosed painful left hand and wrist injury. And Dr. Melhorn did not opine that it was probable that the injury had accentuated claimant's underlying carpal tunnel syndrome. Moreover, Dr. Murati did not opine that the injury "solely" aggravated claimant's preexisting carpal tunnel syndrome. Instead he opined that the injury had not only aggravated the preexisting carpal tunnel syndrome but had also resulted in a left torn triangular fibrocartilage. Based upon the evidence compiled to date, this Board Member finds that K.S.A. 2011 Supp. 44-508(f)(2) is not applicable. Claimant has met her burden of proof to establish she suffered accidental injury arising out of and in the course of her employment and such accident was the prevailing factor in causing her injuries.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>3</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Thomas Klein dated March 8, 2012, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2012.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

e: Chris A. Clements, Attorney for Claimant, cac@cl.kscoxmail.com  
Vincent A. Burnett, Attorney for Respondent, Vburnett@MTSQH.com  
Thomas Klein, Administrative Law Judge

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<sup>2</sup> K.S.A. 44-534a.

<sup>3</sup> K.S.A. 2011 Supp. 44-555c(k).